

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

x

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 3/19/08

In re:

DELTA AIR LINES, INC, et al.

Debtors.

x

Dana Mehen,

Appellant,

07-CV-11465 (CM)

-against-

Delta Air Lines, Inc.,

Debtor-Appellee.

x

## MEMORANDUM ORDER DISMISSING THE APPEAL OF DANA MEHEN

McMahon, J.:

Before this Court is Debtor/Appellee's motion to dismiss the appeal of Dana Mehen ("Appellant") from the Order of the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") dated August 21, 2007 (Case No. 05-17923, Docket No. 6642). The motion is granted.

Pursuant to Rule 8002(a) of the Federal Rules of Bankruptcy Procedure, notices of appeal "shall be filed with the clerk within 10 days of the date of the entry of the judgment, order, or decree appealed from." "Lack of notice of the entry does not affect the time to appeal or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 8002." Fed. R. Bankr. P. 9022(a).

Rule 8002(c)(2) permits a bankruptcy judge to extend the time for filing the notice of appeal by any party. However, "An extension of time for filing a notice of appeal may not exceed 20 days from the expiration of the time for filing a notice of appeal otherwise prescribed by this rule or 10 days from the date of entry of the order granting the motion, whichever is later." Fed. R. Bankr. P. 8002(c)(2).

In this case, the Appealed Order is dated August 21, 2007 and was entered by the Bankruptcy Court on August 24, 2007. Under 8002(a), any notice of appeal was required to be filed with the Bankruptcy Court on or before September 4, 2007.

The Notice of Appeal of Dana Mehen is dated October 8, 2007 (more than one month late), and was not stamped as received by the clerk of the Bankruptcy Court until October 15, 2007.

The Bankruptcy Court has not granted Appellant an extension of time to file a notice of appeal with respect to the Appealed Order. And, pursuant to Bankruptcy Rule 8002(c)(2), any such motion or request to extend the time to file an appeal was required to have been filed by September 24, 2007.

Thus, the Notice of Appeal is untimely and the appeal must be dismissed with prejudice.

Dated: March 18, 2008

  
\_\_\_\_\_  
U.S.D.J.

BY FIRST CLASS MAIL TO ALL PARTIES